

REMARKS

Claims 1-42 are pending in the application. Claims 1, 7, 9, 13, 16, 25 and 34 are independent. By the foregoing Amendment, claims 25-33 have been amended. These changes are believed to introduce no new matter and their entry is respectfully requested.

Rejection of Claims 25-33 Under 35 U.S.C. §101

In paragraph 1 of the Office Action, the Examiner rejected claims 25-33 under 35 U.S.C. §101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection. By the foregoing Amendment, Applicant has amended claims 25-33 to read “*tangible* machine readable medium” (emphasis added). Accordingly, Applicant respectfully submits that claims 25-33 are statutory subject matter and respectfully request that the Examiner reconsider and remove the rejection to them.

Rejection of Claims 1-42 Under 35 U.S.C. §103(a)

In paragraph 5 of the Office Action, the Examiner rejected claims 1-6 and 16-42 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,141,567 to Youssefmir *et al.* (hereinafter “Youssefmir”) in view of U.S. Patent No. 6,285,891 to Hoshino (hereinafter “Hoshino”), claims 7-12 under 35 U.S.C. §103(a) as being unpatentable over Youssefmir in view of U.S. Patent No. 6,185,440 B1 to Barratt *et al.* (hereinafter “Barratt”), and claims 13-15 under 35 U.S.C. §103(a) as being unpatentable over Youssefmir Barratt in further view of U.S. Patent No. 6,167,039 to Karlsson *et al.* (hereinafter “Karlsson”). To establish a *prima facie* case of obviousness, an Examiner must show that there is some suggestion or motivation to modify a reference to arrive at the claimed invention, that there is some expectation of success, and that the cited reference teaches each and every element of the claimed invention. (MPEP §2143.) *citing In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)). Applicant respectfully traverses the rejection.

MPEP §706.02(a) provides that an examiner should determine whether a rejection is to be made under 35 U.S.C. §§102(a), (b), or (e) using a printed publication or patent that the Examiner believes discloses the claimed invention. MPEP §706.02(a)II.A. provides that if the

publication or issue date of the cited reference is more than one year prior to the effective filing date of the application being examined, the cited reference can qualify as prior art under 35 U.S.C. §102(b).

MPEP §706.02(a)II.B. provides that if the publication or issue date of the cited reference is too recent for 35 U.S.C. §102(b) to apply, then the examiner should consider 35 U.S.C. §102(e). That is, the publication or issue date of the cited reference is less than one year prior to the effective filing date of the application being examined, then the cited reference cannot qualify as prior art under 35 U.S.C. §102(b), but can qualify as prior art under 35 U.S.C. §102(e).

MPEP §706.02(a)II.C. provides that if the cited reference has a publication date earlier than the effective filing date of the application being examined and the cited reference is not the applicant's own work then the cited reference cannot qualify as prior art under 35 U.S.C. §102(a). MPEP §706.02(a)II.C. further provides that a cited reference that is only prior art under 35 U.S.C. §102(e), (f), or (g) and applied in a rejection under 35 U.S.C. §103(a) can be disqualified under 35 U.S.C. §103(c) if the cited reference and the application being examined were commonly owned, or subject to an obligation of common assignment, at the time the invention was made.

Applicant respectfully submits that Youssefmir cannot qualify as prior art under 35 U.S.C. §103(a) because it is disqualified under 35 U.S.C. §103(c). The issue date of Youssefmir is October 31, 2000, which is not more than one year prior to the effective filing date, September 22, 2000, of the present application. Thus, Youssefmir cannot qualify as prior art under 35 U.S.C. §102(b). The publication date of Youssefmir is October 31, 2000, which is not earlier than the effective filing date, September 22, 2000, of the present application. Thus, Youssefmir cannot qualify as prior art under 35 U.S.C. §102(a). The publication date of Youssefmir is October 31, 2000, which is less than one year prior to the effective filing date, September 22, 2000, of the present application. Thus, Youssefmir can only qualify as prior art under 35 U.S.C. §102(e).



Applicant respectfully submits that Youssefmir and the claimed invention were at the time the invention was made owned by the ArrayCom, Inc., or subject to an obligation of assignment to ArrayCom, Inc. Applicant respectfully submits further that in light of common ownership and because Youssefmir can only qualify as prior art under 35 U.S.C. §102(e) Youssefmir is disqualified as prior art under 35 U.S.C. §103(c). Accordingly, Applicant respectfully requests that the Examiner reconsider and remove the rejection to claims 1-42.

CONCLUSION

Applicant submits that all grounds for rejection have been properly traversed, accommodated, or rendered moot and that the application is now in condition for allowance. The Examiner is invited to telephone the undersigned representative if the Examiner believes that an interview might be useful for any reason.

Respectfully submitted,

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